

### REMARKS

Reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

By this amendment, claims 55 – 74 and 79 – 81 have been cancelled without prejudice or disclaimer.

Claims 75, 76, 77, 82, 83, 87, 89, 91, 93, and 95 have been amended. The amendments are fully supported in the as-filed specification.

Claims 98 – 108, inclusive, have been withdrawn pursuant to the Examiner's requirement for restriction. Applicants expressly reserve the right to file one or more divisional applications to these non-elected claims.

The support for the amendments in claim 75 are to be found in claims 81, 82 and 83.

The basis for the amendment of claim 82 is to be found at page 6, lines 29 – 30 of the specification.

The amendments made to claim 83 are supported at page 7, lines 2- 3 of the specification.

The claims presently pending herein are 75 – 78, 82 – 97, 109 – 119.

### 35 USC §112

Claims 65, 75 and 91 stand rejected under § 112, second paragraph, as being indefinite. This rejection is respectfully traversed.

The rejection of claim 65 is rendered moot in view of its cancellation herein.

The amendment to claim 75 renders the claim definite since “pyrazine derivative” as defined in claims 55 has been canceled herein.

In claim 91, the phrase “or foodstuff” has been cancelled.

Since the § 112 rejections have been overcome, their withdrawal is solicited.

### 35 USC §102

Claims 55-65, 70 and 73-74 stand rejected under § 102(b) as being anticipated by Bastin et al. (US 2002/011939). This rejection is traversed.

The §102(b) rejection over Bastin et al. is rendered moot by the cancellation of claims 55-74.

The Examiner has rejected claims 55-58,65-75 and 109 under § 102(b) as being anticipated by Winter et al (US 3,702,253). The rejection is traversed.

Winter et al. (column 17, lines 7-24) describes pyrazine ethers and alcohols as having utility as flavor agents. The pyrazine alcohols taught by Winter et al. have 0-2 carbon atoms and comprise only one (1) hydroxyl group. In contrast, the present claims require that the hydroxyhydrocarbyl residue comprises *at least two (2)* hydroxyl groups.

The rejection under § 102(b) has been overcome since the claims distinguish over the reference. Withdrawal of the rejection is solicited.

### 35 USC §103

Claims 75-97 and 109-119 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bastin et al. in view of Agyei-Aye et al. This rejection is traversed.

Bastin et al. teach a stable aqueous deoxyfructosazine solution. Bastin et al. teach that deoxyfructosazine is known for its antidiabetic properties and is specifically concerned with its pharmaceutical use for oral administration ([0002] and [0003]).

Agyei-Aye et al. teach that it is known to use the reaction products of reducing sugars with ammonia and ammonium salts as colorants and flavorants in the food, beverage and tobacco industry. Agyei-Aye observe that these reactions produce a complex series of products which has made understanding of the mechanisms of such reactions difficult. The authors report the outcome of a model study in which D-glucose was reacted in aqueous solution with each of the following ammonium salts: acetate, bicarbonate, carbonate, chloride, citrate, formate, monohydrogenphosphate, sulfate and sulfite. The major reaction product of interest was 2,6-

deoxyfructosazine, as it had been shown to be a marker for the polymeric material formed from such reactions.

According to the Examiner, Bastin et al. and Agyei-Aye et al. "are combinable because they are concerned with the same field of endeavour, namely edible compositions comprising deoxyfructosazine". Applicants respectfully disagree.

Whereas Bastin et al. are concerned with providing a stable pharmaceutical composition for oral administration that contains deoxyfructosazine as the active principle, Agyei-Aye is concerned with unraveling the mechanisms that play a role in the reaction of reducing sugars with ammonium salts, using 2,6-deoxyfructosazine as a marker for the polymeric material formed from such reactions.

Although Applicants do not dispute that both Bastin et al. and Agyei-Aye mention deoxyfructosazine, Applicants hold the view that these references are not combinable as they relate to different technical fields and because they address very different issues.

According to the Examiner, "it would have been obvious to one of ordinary skill in the art to have used the deoxyfructosazine composition of Bastin et al. in a food or beverage, as taught by Agyei-Aye et al. for the purpose altering its color and/or flavoring as desired".

Applicants strongly disagree with this reasoning as it is made with the benefit of hindsight. Agyei-Aye et al. teach that reactions of reducing sugars with ammonium salts are important in the preparation of flavors and caramel colors and further teach that 2,6-deoxyfructosazine may be formed in these reactions. Applicants traverse the Examiner's implicit assertion that for a person of ordinary skill in the art it would have been obvious to replace commercially available flavors or caramels by the pharmaceutical formulation taught by Bastin et al.

First of all, Applicants fail to see what incentive a person of ordinary skill would have had to make such a replacement. Secondly, assuming that such an incentive can be identified, we fail to see why a person of ordinary skill would have been motivated to make such a substitution with a reasonable expectation of success.

It is respectfully submitted that independent claims 75 and 110 clearly distinguish over the combination of art since a *prima facie* case of obviousness has not been established by a preponderance of the evidence.

Claims 76-82, 87-97 and 110-112 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Winter et al. This rejection is traversed.

As explained herein previously with respect to the § 102 rejection, Winter et al. fail to disclose pyrazine derivatives as defined in the newly amended claims. Hence, the claimed subject matter cannot be said to be obvious in view of Winter et al. Since claims 76 – 82, 87 – 97 and 110 – 112 distinguish over the disclosure of Winter et al., the rejection has been overcome and its withdrawal is solicited.

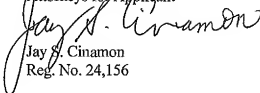
Claims 55-56, 58-62, 65-74, 76, 81-86 and 94-94 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 37, 43-51, 54-58 and 92-101 of co-pending Application No. 10/573,349. This rejection is traversed.

The enclosed Terminal Disclaimer serves to overcome this non-statutory obviousness-type double patenting rejection.

The issuance of a Notice of Allowance is now in order and is solicited.

Please charge any additional fee(s) and credit any overpayments to deposit account no. 01-0035.

Respectfully submitted,  
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